

## NINTH DAY.

SENATE CHAMBER,  
AUSTIN, TEXAS, January 20, 1881. }

Senate met pursuant to adjournment, Lieutenant-Governor Storey in the chair.

Roll called—quorum present.

Prayer by Rev. Dr. McLain, of Georgetown University.

On motion of Senator Tilson the reading of the minutes was dispensed with.

Senator Harris wished his vote corrected on journal from yea to nay on Senate bill No. 11, and it was so ordered.

On motion of Senator Houston, Senator Powers came forward and was sworn in by the President.

On motion of Senator Houston, Senator Powers was excused for his unavoidable absence.

Senator Burton presented a petition by citizens of Wharton county, asking the Legislature to abolish the civil and criminal jurisdiction of the county court of that county, alleging as a reason therefor that the county taxes were greatly increased by the operations of said court, and laboring men forced from their labors on the plantations to attend said court. Read and referred to Judiciary Committee No. 1.

Senator Harris presented a memorial signed by citizens of Bell county, asking that a State normal school be established at Salado, in that county, giving various reasons therefor, and proposing, for those persons in whom the title to the building and grounds of the Salado college are vested, to donate the same to the State, on condition that a State normal school shall be established there. Referred to the Committee on Education.

Senator Hightower, for Committee on General Land Office, submitted the following report:

COMMITTEE ROOM,  
AUSTIN, January 20, 1881.

Hon. L. J. Storey, President of the Senate:

Your Committee on General Land Office, to whom was referred Senate bill No. 38, entitled "An act to amend article 3812, title 79, of the Revised Civil Statutes of Texas," beg leave to report that they have considered the same, and they instruct me to report said bill back to the Senate, and they recommend that it do pass, for the reason that the article of which it is amendatory does not provide for any record or evidence to be kept by the Commissioner of the General Land Office of his action in giving or mailing notices to parties of the forfeiture of surveys in which they are interested, and said amendment supplies said defect.

HIGHTOWER, Chairman.

Bill read first time.

Senator Homan, chairman Committee of Revision of Rules, submitted the following report:

COMMITTEE ROOM,  
AUSTIN, January 20, 1881.

Hon. L. J. Storey, Lieutenant-Governor, and President of the Senate:

Your Committee on Revision of the Rules, to whom was referred Senate resolution No. 22, providing for the appointment of a committee on apportionment and representation, have considered the same, and I am instructed to report that in the judgment of the committee the appointment of such a committee is not necessary or advisable at this time. Your committee therefor recommend that said resolution lie upon the table, and that action thereon be deferred until such time during the session as the committee thereon proposed may be needed.

HOMAN, Chairman.

Senator Moore, chairman of Committee on Stock and Stockraising, submitted the following report:

COMMITTEE ROOM,  
AUSTIN, January 20, 1881.

Hon. L. J. Storey, President of the Senate:

Your Committee on Stock and Stockraising have had under consideration Senate bill No. 25, entitled "An act to amend articles 4562 and 4566 of the Revised Civil Statutes," and I am instructed to report the same back to the Senate and request that one hundred copies of the bill be printed for the use of the committee.

MOORE, Chairman.

Report adopted, and 100 copies of bill ordered printed.

On motion of Senator Duncan, the report of Senator Ho-

man, chairman of Committee on Revision of Rules was adopted.

Senator Martin of Navarro, chairman on Committee of Agricultural Affairs, submitted the following report:

COMMITTEE ROOM,  
AUSTIN, January 20, 1881.

Hon. L. J. Storey, President of the Senate:

Your Committee on Agricultural affairs, to whom was referred Senate bill No. 33, a bill to be entitled, "An act to repeal articles 4081, 4082, 4083, 4084, 4085, 4086, 4087, 4088, and 4089, title 82, of the Revised Civil Statutes of the State of Texas;" and also an act, April 19, 1870, entitled "An act to amend an act entitled 'an act creating the office of public weigher, and defining the duties and liabilities thereof,'" have had the same under consideration, and have instructed me to report the bill back, and recommend that it do pass.

MARTIN of Navarro, Chairman.

Bill read first time.

Senator Stubbs, chairman of Committee on Commerce and Manufactures, submitted the following report:

COMMITTEE ROOM,  
AUSTIN, January 20, 1881.

Hon. L. J. Storey, President of the Senate:

Your Committee on Commerce and Manufactures, to whom was referred Senate bill No. 27, entitled "An act concerning factors and commission merchants, have had the same under consideration, and a majority of the committee instruct me to report it back, and recommend its passage with the accompanying amendments, and also ask that one hundred copies thereof be printed for the use of the Senate.

STUBBS, Chairman.

Amend section 7 by inserting, on line nineteen, after the word "express, the word "written."

Amend Section 7, by striking out in line fifty-three, page five, all after the word "guilty," and down to the word "dollars," and insert the following: "of a felony, and upon conviction thereof, shall be punished by confinement in the penitentiary for not less than two, nor more than five years."

Senator Hightower submitted the following report:

COMMITTEE ROOM,  
AUSTIN, January 20, 1881.

Hon. L. J. Storey, President of the Senate:

The undersigned member of Committee on Commerce and Manufactures, to whom was referred Senate bill No. 27, entitled "An act concerning factors and commission merchants," respectfully dissents from the report recommending the passage of said bill, made by the majority of said committee, because he believes the effect of said bill, if passed into a law, will operate injuriously upon the rights and interests of agricultural producers.

Second—Because the effect of such bill is, by legislation, to enable factors and commission merchants to pass the title of property consigned to them for sale out of the true owner, without his actual knowledge or consent.

Third—Because the effect of same is to allow factors and commission merchants to encumber and destroy the rights and titles of their consignors in the property consigned, no matter how large or valuable, for an advance, no matter how small; and because the remedy given in such bill for a violation of its provisions by punishment of the factor in a criminal action, is no remedy for a pecuniary loss that may be inflicted on the consignor under the privileges given such factor therein. Wherefore, it is respectfully recommended that said bill do not pass.

R. S. HIGHTOWER,

Member of said committee, in the minority.

Bill read first time, and on motion of Senator Duncan, 100 copies of bill, with majority and minority reports, ordered printed.

Senator Houston, chairman of the Committee on Constitutional Amendments, submitted the following report:

COMMITTEE ROOM,  
AUSTIN, January 20, 1881.

Hon. L. J. Storey, President of the Senate:

Your Committee on Constitutional Amendments, to whom was referred Senate joint resolution No. 20, entitled "A joint resolution amending section three, article seven, of the Constitution of the State of Texas, authorizing the Legislature to levy an ad valorem tax on all property in the State, in an amount not to exceed twenty-five cents on the one hundred dollars, for the benefit of the public free schools," have carefully considered the same, and I am instructed by a majority of the committee to report it back to the Senate with the accompanying amendment, and as amended, to recommend its passage.

HOUSTON, Chairman.

Committee amendment—Add the following: "And no part of the general revenue shall be appropriated for school purposes."

Read first time with report.

Senator Gooch, of above committee, submitted the following minority report:

MINORITY REPORT.

Joint resolution No. 20, entitled "A joint resolution amending section three, article seven, of the Constitution of the State of Texas, authorizing the Legislature to levy an ad valorem tax on all property in the State, in an amount not to exceed twenty-five cents on the one hundred dollars, for the benefit of the public free schools."

COMMITTEE ROOM,  
AUSTIN, JANUARY 20, 1880.

Hon. L. J. Storey, President of the Senate:

A minority of the members of the Committee on Constitutional Amendments do not concur with the majority in recommending the passage of the above entitled joint resolution. The importance of the subject, we think, suggests the propriety of making known to the Senate the grounds of our dissent.

The joint resolution reported has for its object the repeal of section three, article seven, of the Constitution, which reads as follows:

"Sec. 3. There shall be set apart annually, not more than one-fourth of the general revenue of the State, and a poll tax of one dollar, on all male inhabitants in this State, between the ages of twenty-one and sixty years, for the benefit of the public free schools," and recommends a substitute therefor, to read as follows:

"Sec. 3. There shall be levied, annually, an ad valorem tax on all the property in this State, of an amount not to exceed twenty-five cents on the one hundred dollars, and a poll tax of one dollar on all male inhabitants of this State, between the ages of twenty-one and sixty years, for the benefit of public free schools."

The minority of your committee recommend as a substitute for the resolution of the committee a joint resolution in the following language:

"Joint resolution amending section 3, article 7, of the Constitution of the State of Texas, providing for a specific ad valorem school tax, and amending section 9, article 8, thereof limiting the ad valorem tax for general purposes."

"Be it resolved by the Legislature of the State of Texas, That section 3, article 7, of the Constitution of this State shall hereafter read as follows:

"Sec. 3. There shall, annually, be levied and collected, on all taxable property within this State, a specific ad valorem tax of twelve and one-half cents on the one hundred dollars of value, and a poll tax of one dollar on all male inhabitants in this State between the ages of twenty-one and sixty years, for the benefit of the public free schools; and no part of the general revenue shall be appropriated for school purposes."

"Be it further Resolved, That section 9, article 8, of the Constitution of the State of Texas shall be amended so as to hereafter read as follows:

"Sec. 9. The State tax on property, exclusive of the tax necessary to pay the public debt and the specific ad valorem school tax, shall never exceed thirty-seven and one-half cents on the one hundred dollars valuation; and no county, city or town shall levy more than twenty-five cents on the one hundred dollars valuation; except for debts incurred prior to the 18th day of April A.D. 1876, and for the erection of public buildings, not to exceed fifty cents on the one hundred dollars in any one year, and except as in this Constitution is otherwise provided."

We invite attention to the fact that the bill presented by the majority raises the maximum rate of taxation for school purposes from 12 1-2 cents on the \$100 to 25 cents on the \$100; and while it provides that no part of the general revenue shall be appropriated for school purposes, it leaves the maximum ad valorem tax that may be levied for general purposes at 50 cents on the \$100, so that the maximum ad valorem tax for both school and general purposes would be raised from 50 cents on the \$100 to 75 cents on the \$100.

We are opposed to the bill of the majority for the following reasons:

1. It raises the ad valorem tax for schools from 12 1-2 to 25 cents on the \$100, that may be levied over the entire State, and does not confine the levy and increase of tax to counties or subdivisions thereof, to be levied only upon the consent of the tax payers (as is now provided for cities and towns), and used in the locality where it is paid.

2. It fails to fix any specific sum which shall be levied each year, and leaves open, for continual agitation from year to year, the amount which shall be devoted to public common schools, and keeps their support and extent of their support a live political issue, when it should not be so left.

3. It increases the power of the Legislature to levy taxes from 50 cents on the \$100 to 75 cents on the \$100, which we think not advisable.

We think the substitute of the minority should be adopted for the following reasons:

1. Because it fixes a certain specific tax for public schools, which cannot be increased or diminished by the Legislature, and will supply a certain fund which can be relied on under all circumstances, and make permanent and secure the support of the free schools.

2. Because, while it fixes the school tax at 12 1-2 cents on \$100, it

limits other taxation to 37 1-2 cents on the \$100, together aggregating 50 cents on the \$100, as now fixed by law, and limits county tax at 25 cents on the \$100.

All of which is respectfully submitted.

JNO. YOUNG GOOCH.

Bill read first time, and 100 copies of the bill, with majority and minority reports, ordered printed.

Senator Duncan offered the following concurrent resolution:

WHEREAS, A bill making an appropriation for the contingent expenses of the Seventeenth Legislature has been passed at the present session by both houses; and whereas, said bill is now in the hands of the Executive, as yet not approved by him; and whereas, it appears upon the suggestion of the Executive that there are certain provisions in said bill in conflict with the general law, as contained in the Revised Statutes of the State of Texas; and whereas, said conflict was not designed in the passage of said bill, but was wholly inadvertent; therefore,

Be it resolved by the Senate, the House concurring, That his Excellency the Governor be respectfully requested to return said bill to the Senate, the same being the house in which it originated, and that the same be withdrawn from the consideration of his Excellency, so that they may be amended so as to conform to the general law.

Adopted.

Senator Lightfoot introduced a bill entitled, "An act to authorize the Governor to ascertain and file in the War Department of the United States, or in such other department as the matter may be referred to, a careful abstract, accompanied with the proper vouchers and proofs, of the money expended and indebtedness assumed and incurred by the State of Texas in repelling invasions by Mexican and Mexican Indian banditti, and in suppressing Indian hostilities." Referred to Committee on Federal Relations.

Senator Swain introduced a bill entitled "An act to amend article 1054, title 15, chapter 2, of the Code of Criminal Procedure." Referred to Judiciary Committee No. 2.

Senator Terrell introduced a bill entitled "A bill to amend article 6 of the Constitution of the State of Texas, by adding to said article a section restricting suffrage in Texas, to those who pay their taxes, and to prescribe an oath to be taken before voting, if required by challenge." Referred to Committee on Constitutional Amendments.

Senator Lair introduced a joint resolution, proposing an amendment to article eight, of the Constitution of the State of Texas, by adding another section thereto, conferring power upon the Legislature to exempt from taxation for a limited period certain investments in manufactures in Texas. Referred to Committee on Constitutional Amendments.

Senator Duncan introduced a bill entitled "An act to make penal any disclosures of proceedings or divulgements of secrets of the grand jury." Referred to Judiciary Committee No. 2.

Senator Davenport introduced a bill entitled "An act to amend title 11, chapter 1, article 241, of the Revised Civil Statutes of the State of Texas, passed February 21, 1879." Referred to Judiciary Committee No. 1.

Senator Tilson introduced a bill entitled "An act to amend article 4256, of the Revised Civil Statutes of the State of Texas, relating to passenger fare on railroads." Referred to Committee on Internal Improvements.

Senator Henderson introduced a bill entitled "An act to amend articles 635 and 636, of the Code of Criminal Procedure" Referred to Judiciary Committee No. 2.

Senator Harris introduced a bill entitled "An act to establish a State normal school at Salado, in Bell county." Referred to Committee on Education.

Senator Buchanan of Wood offered a joint resolution amending section 5, of article 7, of the Constitution of the State of Texas. Referred to Committee on Constitutional Amendments.

Senator Swain offered a joint resolution proposing an amendment to the Constitution of the State of Texas. Referred to Committee on Constitutional Amendments.

Senator Lane introduced a bill entitled "An act making an appropriation of two hundred dollars for the purpose of hav-

ing the State of Texas personally represented at the meeting of the trustees of the Peabody fund, at Washington, D. C., on the second day of February, 1881." Referred to Committee on Education.

Senator Burton introduced a bill entitled "An act to authorize county courts to levy a road tax, and to improve roads and bridges." Referred to Committee on Roads, Bridges, etc.

On motion of Senator Davenport, Senator Swain was excused for the day on account of sickness.

Senator Homan offered the following resolution:

*Resolved*, That the Committee on Public Printing be authorized to have printed immediately fifty copies of the Rules of the Senate, with the joint rules of the Senate and House, and the Constitution of the State of Texas, and a list of the officers and standing committees of the Senate, interleaved, bound and indexed, for the use of the Senate.

Senator Henderson moved to amend by having one hundred copies printed instead of fifty, which amendment was accepted by Senator Homan.

Senator Terrell moved to amend by striking out "and the Constitution of the State of Texas."

On motion of Senator Gooch, the resolution, with amendments, was referred to the Committee on Printing.

Senator Lane introduced a bill entitled "An act to establish a State normal school at Goliad, to be called the John W. Fannin Normal Institute, in honor of Col. Fannin, who, with his immortal companions, was massacred on the the twenty-seventh of March, 1836." Referred to the Committee on Education.

Senator Burton offered a joint resolution proposing to amend sections 5 and 24 of the Constitution of the State of Texas. Referred to Committee on Constitutional Amendments.

Senator Buchanan of Wood introduced a bill entitled "An act to amend chapter 5 of the Penal Code, by adding thereto another article, to be styled article 113a." Referred to Judiciary Committee No. 2.

Senator Cooper introduced a bill entitled "An act to amend article 801, chapter 3, title 9 of the Code of Criminal Procedure of the State of Texas, passed February 21, 1879." Referred to Judiciary Committee No. 2.

Senator Gooch introduced a bill entitled "An act to provide for the reference of cases pending in the Supreme Court and Court of Appeals to the Commissioners of Appeals for examination and report." Referred to Judiciary Committee No. 1.

Senator Homan offered the following resolution:

*Resolved*, That Senate rule No. 29 be and is hereby amended so as to read as follows:

"Senate Rule No. 29. A bill when introduced may be read at length for information or by its caption; and in either case it shall be referred to a committee. The first reading of the bill, as contemplated by the Constitution, and which may be by caption, shall be the reading when it is reported by a committee. And no motion to reject a bill shall be made until it has been reported on by a committee.

Referred to Committee on Rules.

Senator Buchanan of Wood offered the following resolution:

*Resolved*, That the Committee on Contingent Expenses be required to ascertain the number of days Mr. Walter P. Fisher was engaged in sitting up the Senate Chamber for the use of the Senate during its present session, and report to the Senate what amount should be allowed for such service.

Referred to Committee on Contingent Expenses.

A message was received from the House, announcing the passage of Senate concurrent resolution "Asking the withdrawal of Senate bill No. 9, 'An act making an appropriation for the contingent expenses of the Seventeenth Legislature,' from the consideration of his Excellency, in order that the same may be so amended as to conform the general to law."

The hour for the special order having arrived, to-wit, Senate bill No. 15, entitled "An act to encourage the construction of artesian wells," the same was taken up—Senator Dun-

can's amendment of yesterday, "Providing that no aid shall be granted until a constant flow of water is secured," pending.

Amendment lost by the following vote:

YEAS—10.		
Buchanan of Grimes	Henderson,	Tilson,
Buchanan of Wood,	Hightower,	Weathered,
Cooper,	Terrell,	Wynne.
Duncan,		
NAYS—17.		
Burton,	Lair,	Powers,
Davenport,	Lane,	Rainey,
Gooch,	Lightfoot,	Shannon,
Harris,	Martin of Cooke,	Stewart,
Homan,	Martin of Navarro,	Stubbs,
Houston,	Moore,	
NOT VOTING—2.		
Burgess,	Patton.	

Senator Lane offered the following amendment: Amend by adding to section 3, after the word "required" in the last line thereof, viz: "And in boring said well it shall be the duty of the person or firm, corporation or company, on reaching different formations or strata, to preserve a specimen thereof in some secure manner, and by labeling the same with the name of the county wherein the well is being bored, and the depth from the surface from which said specimen was taken; and to transmit the same at his or their expense to the officer at the seat of government who has in charge the geological specimens." Adopted.

Senator Duncan offered the following amendment. After the word "feel" in line 22, section 4, insert "and shall have secured a constant flow of water."

Senator Houston raised the point of order, that the same amendment in substance had been voted down.

The President sustained the point of order, and amendment lost.

Senator Hightower offered the following amendment: Amend by adding section 6, to read as follows:

Section 6. No more than five of the wells provided for in the previous sections of this act shall be made in any one county of this State, and the location of all such wells shall be fixed by the county commissioners' court of the county in which they are made, and the said court shall regulate the number of wells to be dug in their county.

Senator Buchanan offered the following as a substitute for the amendment of Senator Hightower: Amend by inserting between sections 4 and 5, the following:

Section 5. No person, firm or corporation shall receive any land grant under the provisions of this act for making more than one well in an area of twenty-five miles square.

Adopted as a substitute for amendment to the bill.

Senator Cooper offered the following amendment: Add after the word "at" in thirty-first line, as follows: "The Commissioner of the General Land shall not issue more than two hundred and fifty of said land certificates for the purposes provided for in this act." Lost.

Senator Lightfoot offered the following amendment: Amend by adding after the word "State," in line 2, section 5, the following words: "Provided, the said certificates shall be located in alternate sections as now required by law for the location of lands by railroad and irrigation companies; every alternate section to be reserved for the public school fund." Adopted.

The bill being on its engrossment, Senator Duncan moved a call of the Senate. Call sustained. Roll called. Senate full and the call suspended.

The bill was then ordered engrossed by the following vote:

YEAS—17.		
Burgess,	Lair,	Powers,
Davenport,	Lane,	Rainey,
Gooch,	Lightfoot,	Shannon,
Harris,	Martin of Cooke,	Stewart,
Homan,	Martin of Navarro,	Stubbs,
Houston,	Moore.	

## NAYS—12.

Buchanan of Grimes  
Buchanan of Wood,  
Burton,  
Cooper,

Duncan,  
Henderson,  
Hightower,  
Patton,

Terrell,  
Tilson,  
Weatherrod,  
Wynne.

The following messages were received from his Excellency the Governor:

EXECUTIVE OFFICE, STATE OF TEXAS,  
AUSTIN, January 20, 1881.

To the Honorable Senate of the State of Texas:

I have the honor to present to you the following named gentlemen for the respective offices named, and respectfully request their confirmation:

General John B. Jones, of Navarro, for Adjutant-General.

Mr. Horace Chilton, of Smith, for Assistant Attorney-General.

Mr. T. H. Bowman, of Bell, for Secretary of State.

Colonel A. W. Spaight, of Galveston, Commissioner of Insurance, Statistics and History.

Dr. Wm. E. Saunders, to be Superintendent of the Lunatic Asylum.

Dr. Frank Rainey, to be Superintendent of the Blind Asylum.

Colonel John S. Ford to be Superintendent of the Deaf and Dumb Asylum.

Respectfully submitted.

O. M. ROBERTS, Governor.

Senator Martin of Navarro moved that the Senate go into executive session to consider the appointments just sent in to the Senate by his Excellency the Governor, to-morrow morning just after the morning call. Adopted.

THE STATE OF TEXAS, EXECUTIVE OFFICE,  
January 20, 1881.

To the Honorable, the Senate and House of Representatives, in the Legislature assembled:

Gentlemen—I have information from the members of the Commission of Appeals now in session at Galveston, that it is almost certain that the business submitted to their tribunal by consent at that court will not be sufficient to occupy their time, notwithstanding the courts of last resort have more business before them than they can dispose of at this term. Being anxious to employ their time profitably for the State in the dispatch of business in said courts, they have requested that an act be passed immediately by the Legislature, if consistent with its views, authorizing the Supreme Court and the Court of Appeals to submit to said tribunal, cases for their examination, and report of their opinion thereon, by way of aiding said courts in the disposition of the business before them at the Galveston branch of the courts, which I respectfully recommend, with the addition that it be made to apply to the other branches of said courts, so long as said Commission of Appeals shall be continued in existence.

Furthermore, having previously addressed a communication to the respective members of each of said courts, requesting that they should communicate to me any constitutional or legal amendments for the improvement of said courts, or any of them, that they or either of them might think proper, I respectfully submit to you the following action of said courts, in regard to the conclusions reached by them as to the means of disposing of the business of the Supreme Court and Court of Appeals, which it is not practicable for said courts to dispose of during the present term, either at Galveston or at Austin, which I respectfully submit to the consideration of your honorable bodies; because it is very important that the business should be disposed of, and further, because I regard that the views of the judiciary department, as to the most practicable mode of disposing of the business in said courts should be communicated to the Legislature, and merits its due consideration as coming from those more familiar with the subject, than any other department of the government.

O. M. ROBERTS, Governor.

## RESOLUTIONS.

SUPREME COURT ROOM,  
GALVESTON, January 14, 1881.

At a meeting of the members composing the Supreme Court, the Court of Appeals, the Commissions of Appeals, and the Assistant Attorney, General, held in the Supreme Court room, Galveston, January 14, 1881, it was unanimously

Resolved, That for the purpose of a speedy disposition of the unfinished civil business now pending on the dockets of the Supreme Court and the Court of Appeals, we recommend that one or more commissions be appointed, of not less than three judges each, learned in the law, to continue in office until the unfinished civil business is disposed of, and that a copy of this resolution be forwarded by the secretary to his Excellency Governor O. M. Roberts.

M. H. BONNER, Secretary.

Read and referred to Judiciary Committee No. 1.

THE STATE OF TEXAS, EXECUTIVE OFFICE,  
January 20, 1881.

To the Honorable Senate and House of Representatives, in Legislature assembled:

By an act of the Legislature, approved April 17, 1879, which took effect ninety days after the adjournment of said Legislature, in relation to the appointment and removal of the superintendents of the Deaf and Dumb, and the Blind Asylums, it was provided that "the superintendent of either asylum may be removed from office by the Governor, at any time when he deems the public interest demands it; and in case of such removal the Governor shall report the fact, together with his reasons therefor, to the next succeeding session of the Legislature."

In pursuance to the provisions of said act, I beg leave to state the fact that after said act went into effect General Henry E. McCulloch retired from the position of Superintendent of the Deaf and Dumb Asylum, at my request, and that the reasons for requesting his retirement were that the pupils in said school had been for many months previously in a state of dissatisfaction and occasional subordination, which it seemed he was not able to allay and control, so as to produce harmony in the institution.

In a communication addressed by him to me immediately previous to the 21st of July, 1879, he expressed a desire to know my conclusions as to his being retained in that position, upon which the following annexed correspondence took place between us, which resulted in his retirement at the time indicated therein, when Colonel John S. Ford was appointed by me to fill his place, and has been in charge of said institution ever since that time.

Respectfully submitted.

O. M. ROBERTS, Governor.

EXECUTIVE OFFICE, STATE OF TEXAS,  
AUSTIN, July 21, 1879.

General Henry E. McCulloch:

Dear Sir—Your communication with accompanying papers have been received and examined.

As you invite an expression as to my views as to the propriety of your continuance as Superintendent of the Deaf and Dumb Institution, and as it is proper that I should now comply with the request, I do not hesitate to say that my confidence in you as a gentleman of sterling integrity and devotion to duty, as you understood it, according to what you think you should do in the discharge of it in your present position or in any other is unshaken.

I have endeavored to calmly and impartially look over the whole ground in relation to my own duty in the premises, and I have come to the conclusion that it is not under existing circumstances consistent with the public interest that you should continue in that position. This conclusion is reached by a consideration of the interest of the institution in future, without intending any reflection upon your sincere efforts to have managed it to the best of your ability under the circumstances.

The time which you set for closing up your business in the institution, and of turning it over to your successor, at the end of the next month, will be satisfactory to me.

Respectfully your obedient servant,

O. M. ROBERTS, Governor.

TEXAS INSTITUTION FOR THE DEAF AND DUMB,  
AUSTIN, July 29, 1879.

To his Excellency O. M. Roberts, Governor of Texas:

Esteemed Sir—Yours of the twenty-first would have been answered immediately, but for your absence on official duty at Houston and Galveston.

It is only necessary for me to say that respecting your opinions, and yielding to your wishes indicated therein, I shall be fully prepared to retire from the superintendency of this institution on the last day of August, and will take pleasure in putting it in the best condition possible, to be turned over to my successor on the first day of September.

I sincerely thank you for your expressions of unabated confidence in my integrity and devotion to duty, and hope no act of mine will ever give you cause to change them, or to regret their expression in your letter; and I as sincerely hope that your administration will prove a blessing to the entire State, and that you may retire from honored position voluntarily, with great honor to yourself and the profound respect of our people.

Very respectfully your obedient servant,

HENRY E. MCCULLOCH, Supt. D. and D. Inst.

On motion of Senator Gooch, the message and accompanying documents were referred to Committee on Asylums.

Senate bill No. 3 entitled "An act to amend article 314 of the Penal Code," was taken up as business on the President's table, read third time and passed.

Senate bill No. 6, entitled "An act for the relief of all persons whose lands have been sold for taxes and bought in by the State," was taken up and read third time.

Senator Gooch offered the following amendment: In section first strike out "passage of the act" and insert "from the time this act takes effect." Adopted by the following vote:



## YEAS—26.

Buchanan of Grimes	Henderson,	Patton,
Buchanan of Wood,	Hightower,	Powers,
Burgess,	Houston,	Rainey,
Burton,	Lair,	Shannon,
Cooper,	Lane,	Stewart,
Davenport,	Martin of Cooke,	Stubbs,
Duncan,	Martin of Navarro,	Terrell,
Gooch,	Moore,	Tilson,
Weatherrod,		Wynne.

## NAYS—1.

Harris.

## NOT VOTING.—2.

Lightfoot.

Homan,

The bill was then passed by the following vote:

## YEAS—22.

Buchanan of Grimes	Houston.	Shannon,
Cooper,	Lair,	Stewart,
Davenport,	Lane,	Stubbs,
Gooch,	Lightfoot,	Terrell,
Harris,	Martin of Cooke,	Tilson,
Henderson,	Moore,	Weatherrod,
Hightower,	Powers,	Wynne.
Homan,		

## NAYS—5.

Buchanan of Wood,	Martin of Navarro,	Rainey.
Duncan,	Patton,	

## NOT VOTING.

Burton.

Senator Burgess was excused from voting in consequence of personal interest.

A message was received from the House, announcing the passage of House bill No. 11, entitled "An act to amend article 435, of the Code of Criminal Procedure, providing for the transfer of indictments from the district courts to courts having jurisdiction thereof," and Senate joint resolution regarding the port of Galveston.

On motion of Senator Duncan, the Senate adjourned until 10 o'clock A. M., to-morrow.

## TENTH DAY.

SENATE CHAMBER,  
AUSTIN, January 21, 1881. }

Senate met pursuant to adjournment, Lieutenant-Governor L. J. Storey in the chair.

Roll called—quorum present.

Prayer by the Chaplain.

On motion of Senator Martin of Navarro, the reading of the journal was dispensed with.

Senator Terrell, chairman of Judiciary Committee No. 1, submitted the following reports:

COMMITTEE ROOM,  
AUSTIN, January 21, 1881.

Hon. L. J. Storey, President of the Senate:

Your Judiciary Committee to whom was referred Senate bill No. 16, having for its object to change the present mode of condemning private property for the benefit of railroads, have considered the same, and instructed me to report the bill back, with the accompanying substitute, and to recommend that the substitute do pass.

The objection to the original bill is, that it provides that a railroad may proceed with its construction, pending appeal, by depositing the amount of the award of the commissioners, or giving bond in double the amount, to abide the final judgment.

The Constitution, article 1, section 17, requires adequate compensation for private property taken for public use, to be paid or secured by a deposit of money, before the property is taken. What adequate compensation may be, can only be determined by final judgment in case of controversy, and it might be much in excess of the amount deposited under the award as contemplated by the original bill. To permit the road to proceed with its construction work and take the property under such circumstances, would be a violation of the constitutional provision requiring adequate compensation to be first paid or secured.

The substitute permits the construction work to proceed, pending an appeal, if the appeal be taken by the railroad, by depositing the amount of the award of the commissioners; for the property owner assenting to the

judgment, it might, in that case, be safely assumed that the compensation allowed by the award was at least adequate.

It further provides that, if the appeal be taken by the property owner, the construction work may still proceed, on the railroad making a deposit with the county clerk, of the amount which the property owner, his agent or his legal representative, may, under affidavit (to be filed among the papers in the cause), claim he will be damaged by the taking of his property; such amount, it may be safely assumed, would also secure adequate compensation.

TERRELL, Chairman,

Bill read first time.

COMMITTEE ROOM,  
AUSTIN, January 19, 1881.

Hon. L. J. Storey, President of the Senate:

Your Judiciary Committee No. 1, to whom was referred Senate bill No. 26, entitled "An act to amend article 4752 of 'an act to adopt and establish the Revised Civil Statutes of the State of Texas,' approved February 21, 1879," have, after considering, instructed me to report it back, with accompanying amendment, with the recommendation that as amended it do pass.

It will be seen that the purpose of the act is to restore the article, as it originally appeared in the Code, regulating the advertisement for sale for taxes of land. The object of the act is to require a publication of a descriptive list of land to be sold for taxes in a newspaper of the county, if there be one, to the end that the property of non-residents of the county may not be embarrassed by needless sales, and to avoid other evils of the present system of sales. The amendment which I am instructed to recommend is intended to protect the tax-payer against extravagant charges for advertising.

TERRELL, Chairman.

Read first time.

COMMITTEE ROOM,  
AUSTIN, January 21, 1881.

Hon. L. J. Storey, President of the Senate:

Your Judiciary Committee No. 1, to whom was referred Senate bill No. 42, being "An act limiting the employment of sailors and crews of foreign vessels in the ports of this State," have had the same under consideration. The object of the bill is to prevent captains of foreign vessels, while in the ports of this State, from requiring certain labor of their crews, profitable only to the captains, and unjust alike both to such crews and to citizens of this State. I am instructed to report back the bill, with the recommendation that it do pass.

TERRELL, Chairman.

Read first time.

COMMITTEE ROOM,  
AUSTIN, January 21, 1881.

Hon. L. J. Storey, President of the Senate:

Your Judiciary Committee No. 1, to whom was referred Senate bill No. 57, being "An act to amend title 11, chapter 1, article 241 of the Revised Civil Statutes of Texas, adopted February 21, 1879," have had the same under consideration. The object of the bill is to provide for the election of a district attorney in the Thirtieth Judicial District of Texas, and the amendment added by the committee provides for the appointment of such district attorney until the next general election.

TERRELL, Chairman.

Amend by adding:

"Article 241a. The Governor shall appoint a district attorney for the Thirtieth Judicial District, to serve until the next general election.

Read first time.

COMMITTEE ROOM,  
AUSTIN, January 21, 1881.

Hon. L. J. Storey, President of the Senate:

Your Judiciary Committee No. 1, to whom was referred Senate bill No. 49, entitled "An act to amend chapter 10, title 72, of the Revised Civil Statutes of the State of Texas, by adding article 3609a, providing for the surrender of county convicts by the hirer, in certain cases," have had the same under consideration. It is only in very exceptional cases that county convicts can be hired out as provided for by existing law, because the hirer, should a convict refuse to work or attempt to escape, has no adequate relief from the terms of his bond. The bill proposes to afford the needed relief by permitting the hirer, in such cases, to return the convict and pay for the time served. I am instructed to report back the bill with recommendation that it do pass.

TERRELL, Chairman.

Read first time.

COMMITTEE ROOM,  
AUSTIN, January 21, 1881.

Hon. L. J. Storey, President of the Senate:

Your Judiciary Committee No. 1, to whom was referred Senate bill No. 31, being "An act to amend article 1547 of the Revised Civil Statutes, passed February 21, 1879," have had the same under consideration. Under the present law, where there are two justices of the peace residing at the county seat, both must hold the regular terms of their respective courts on